

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Nos. CR-01-0128-FVS

Plaintiff,

ORDER DENYING DEFENDANT'S  
MOTION FOR RE-SENTENCING

v.

MILES DARNELL BAXTER,

Defendant.

**THIS MATTER** came before the Court on Defendant's motion for "resentencing and/or sentence reduction pursuant to 18 U.S.C. § 3582(c)(2)." (Ct. Rec. 65). Assistant United States Attorney Timothy J. Ohms represents the United States, and Defendant is proceeding pro se.

## BACKGROUND

Defendant pled guilty to Distribution of Cocaine Base, Distribution of Over 5 Grams of Cocaine Base, and Maintaining an Establishment for the Purpose of Manufacturing, Distributing or Using a Controlled Substance (Counts 2, 3, 5, 6, and 37 of the Second Superseding Indictment) and, on June 17, 2002, was sentenced to a term of 192 months imprisonment pursuant to the Rule 11(e)(1)(C) plea agreement.

1       Defendant's sentence was adjusted because he was a career  
2 criminal. U.S.S.G. § 4B1.1. The appropriate offense level for a  
3 Career Offender, when the statutory maximum sentence for the offense  
4 is 25 years or more, is level 34. *Id.* Defendant received a Career  
5 Offender enhancement which gave him an offense level of 34 and a  
6 Criminal History Category of VI. A three level reduction for  
7 acceptance of responsibility resulted in a Total Adjusted Offense  
8 Level of 31. Defendant's guideline range, based on an adjusted  
9 offense level of 31 and a criminal history category of VI, was 188 to  
10 235 months. Defendant was sentenced at the lower end of the guideline  
11 range, 192 months incarceration.

12       **DISCUSSION**

13       The sentencing guidelines for crack cocaine offenses have been  
14 amended. *Guidelines Manual* (2007), Appendix C, Amendment 706. The  
15 amendment adjusts downward by two levels the base offense level  
16 assigned to each threshold quantity of crack cocaine (Cocaine Base)  
17 listed in the Drug Quantity Table in §2D1.1 and provides a mechanism  
18 for determining the guideline range for offenses involving crack  
19 cocaine and other substances. This amendment became effective on  
20 November 1, 2007. As of March 3, 2008, time reductions for crack  
21 cocaine offenders sentenced prior to November 1, 2007 are authorized  
22 pursuant to 18 U.S.C. § 3582(c)(2). *U.S. v. Ross*, 511 F.3d 1233, 1237  
23 n. 2 (9th Cir. 2008).

24       Defendant's motion for re-sentencing requests a reduced term of  
25 imprisonment. (Ct. Rec. 65 at 3). Defendant contends his sentence  
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1 should be reduced based on Amendment 706 to the guidelines. (Ct. Rec.  
2 65).

3 Defendant, however, received a Career Offender enhancement  
4 pursuant to U.S.S.G. § 4B1.1 which gave him an offense level of 34 and  
5 a Criminal History Category of VI. Because Defendant was sentenced as  
6 a Career Offender, his guideline range is unaffected by Amendment 706.  
7 In other words, the enhanced offense level of 34 for being a Career  
8 Offender is not subject to the two level departure authorized by  
9 Amendment 706. The enhancement to a level 34 is not based on the  
10 quantity of drugs involved, but rather on Defendant being at least 18  
11 years old at the time he committed the offense of conviction, the  
12 instant offense was a felony that was a controlled substance offense,  
13 Defendant had at least two prior felony convictions of either a crime  
14 of violence or a controlled substance offense, and the statutory  
15 maximum for the offense of conviction was "25 years or more." See,  
16 U.S.S.G. §4B1.1(a) and (b); see, also, *U.S. v. Riviera*, 535 F.Supp.2d  
17 527, 529-539 (E.D. Pa. 2008).

18 As discussed, Amendment 706 does not have the effect of lowering  
19 Defendant's applicable guideline range. If an amendment to the  
20 guidelines does not change the original sentencing analysis, a motion  
21 for reduction of sentence under 18 U.S.C. § 3582(c)(2) is properly  
22 denied. *United States v. Townsend*, 98 F.3d 510, 513 (9th Cir. 1996).  
23 A reduction of Defendant's sentence is thus not authorized under  
24 Section 3582(c)(2). Accordingly, Defendant's Motion For Re-Sentencing  
25 (Ct. Rec. 65) is **DENIED**.

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**IT IS SO ORDERED.** The District Executive shall forward copies of this order to Defendant and to Assistant U.S. Attorney Timothy J. Ohms.

**DATED** this 8th day of October, 2008.

S/Fred Van Sickle  
Fred Van Sickle  
Senior United States District Judge